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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/015,616      | 01/29/1998  | JEAN NORVELL         | FA/141A             | 5936             |

7590                    07/29/2003

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[REDACTED] EXAMINER

JUSKA, CHERYL ANN

[REDACTED] ART UNIT      [REDACTED] PAPER NUMBER

1771

DATE MAILED: 07/29/2003

25

Please find below and/or attached an Office communication concerning this application or proceeding.

A825

|                              |                          |                  |
|------------------------------|--------------------------|------------------|
| <b>Office Action Summary</b> | Application No.          | Applicant(s)     |
|                              | 09/015,616               | NORVELL ET AL.   |
|                              | Examiner<br>Cheryl Juska | Art Unit<br>1771 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 12 May 2003.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-26,35,37-43,49 and 51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-26,35,37-43,49 and 51 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Amendment E, submitted as Paper No. 24 on May 12, 2003, has been entered. Claims 27-34, 36, 44-48, 50, and 52 have been cancelled, while claims 1, 35, and 41 have been amended as requested. The pending claims are 1-26, 35, 37-43, 49, and 51.
2. The cancellation of claims 27-34, 36, 44-48, 50, and 52 renders moot the rejections set forth in sections 8 and 12 of the last Office Action.
3. Amendment E is sufficient to withdraw the 112, 2<sup>nd</sup> rejection based upon *Ex parte Slob*, 157 USPQ 172, set forth in section 5 of the last Office Action. Specifically, applicant has amended the claims to recite that the flock is applied by an electrostatic process. This method limitation is given patentable weight since the method of flocking gives a particular dense, upright flock structure. Additionally, it is noted that all of applicant's working examples have flock applied by an electrostatic process, while the comparative examples do not. Hence, it is agreed that the recitation of flocking by an electrostatic process is sufficient to describe the particular structure which produces the claimed leakage values. Thus, said 112, 2<sup>nd</sup> rejection is hereby withdrawn.
4. Furthermore, Amendment E is sufficient to withdraw the 103 rejection of 35, 39, 40, and 51 as set forth in section 7 of the last Office Action. In particular, independent claim 35 has been amended to recite the wear cycles to leakage property. As noted in the last Office Action, said recitation is sufficient to overcome the cited Henn patent, in that applicant's working examples, which were made according to said Henn patent, do not have the claimed leakage values.

Art Unit: 1771

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 10-13 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are:

- a. The relationship of the substrate to the at least one fabric or material of claims 10-12.
- b. The relationship of the substrate to the at least one material of claims 13 and 15.

Is the additional substrate fabric located between the e-PTFE substrate and the adhesive containing flock or is it located on the side of the substrate opposite the flocked side? Are the claimed materials what make up the fabric or are said materials in addition to said fabric and said e-PTFE substrate?

***Claim Rejections - 35 USC § 103***

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 1-20, 22-26, 35, 37-40, 49, and 51 rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,026,591 issued to Henn et al., in view of EP 445 394 issued to Lumb.

Applicant claims an article comprising an expanded PTFE substrate, an adhesive layer, and a layer of flock thereon. As discussed in previous Office Actions, Henn teaches the presently claimed invention with the exception that the flock layer is applied by an electrostatic

Art Unit: 1771

process and the claimed wear test cycles to leakage values. (See col. 3, lines 6-50, col. 11, lines 35-40, and working examples 8B and 8C and discussion of Henn reference with respect to the present invention in the Office Action of October 7, 1999). However, flocking of an article by an electrostatic process is well-known and common in the art of textiles.

For example, Lumb teaches a drapable, water vapor permeable (i.e., breathable), wind and water resistant composite fabric (abstract). Said composite comprises a fabric substrate, a layer of foamed breathable acrylic polyurethane adhesive, and a layer of flocked fibers (abstract and col. 4, lines 1-6). The flock may be applied by an electrostatic process so that the fibers stand on end (col. 6, lines 14-28 and Figure). Lumb teaches the flocked composite fabric is suitable for an outerwear garment due to its drapability, water and wind resistance, breathability, and insulating properties (col. 2, line 41-col. 3, line 1).

Hence, it would have been obvious to one of ordinary skill in the art to apply a flocked layer to the coated e-PTFE substrate of Henn by an electrostatic method. Motivation to do so would be to provide a soft, comfortable fabric suited for a garment, such as outerwear, wherein said garment is insulative, wind and water resistant, and breathable.

With respect to the claimed wear test cycles to leakage values, it is asserted that this property would be met by the combination of references (i.e., flocking a substrate according to Henn by an electrostatic process according to Lumb). Support for this assertion is found in the fact that like materials can not have mutually exclusive properties. (See *In re Spada*, 15 USPQ2d 1655.) The burden is upon applicant to prove otherwise.

With respect to claim 12, the cited prior art does not explicitly teach the use of a suede, pile, or fleece surface as part of the substrate. However, said fabrics are well known in the art for

Art Unit: 1771

use in the utilities described by Henn and Lumb, in particular, outerwear garments. For example, gloves are frequently lined with a fleeces or pile fabric. Additionally, clothes and shoes are known to employ the claimed surfaces. Hence, it would have been obvious to one of ordinary skill in the art to select the claimed fabrics when making the invention taught by the combination of Henn and Lumb, since said fabrics are well known in the art for the desired utilities as comfortable and aesthetically pleasing.

With respect to claim 19, applicant is given Official Notice that discontinuous layers of adhesive, such as dot patterns or sectional regions, are well known in the art. Such discontinuous adhesive layers are typically employed to prevent the adhesive layer from forming a barrier layer, to reduce costs, or for producing a particular pattern. Thus, it would have been obvious to one skilled in the art to form a discontinuous adhesive layer in the invention of the combination of Henn and Lumb.

With respect to claims 35, 37-40, and 51, the combination of Henn and Lumb does not explicitly teach flocking on both sides of the substrate, as recited in independent claim 35. However, Henn does teach that the adhesive coating, which adheres the flock, may be present on both sides of the e-PTFE substrate (col. 6, lines 49-51). Hence, it would have been obvious to one skilled in the art to flock on both sides of the substrate. Motivation to do so would be to provide a double-faced fabric for added comfort and/or aesthetics.

Therefore, claims 1-20, 22-26, 35, 37-40, 49, and 51 are rejected as being obvious over the cited prior art.

Art Unit: 1771

9. Claims 21 and 41-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Henn and Lumb references as applied to claim 1 above, and further in view of US 5,376,441 issued to Wu et al.

Although Henn and Lumb do not explicitly teach an oleophobic coating on the e-PTFE substrate, said coating are known in the art. Specifically, Wu teaches the use of an oleophobic coating on an e-PTFE substrate in order to produce a breathable article, such as a garment, with enhanced hydrophobic and oleophobic properties (col. 4, lines 42-48). Thus, it would have been obvious to one skilled in the art to employ an oleophobic coating to the substrate taught by the combination of Henn and Lumb, in order to enhance the hydrophobic and oleophobic properties of the fabric substrate. Thus, claim 21 is rejected.

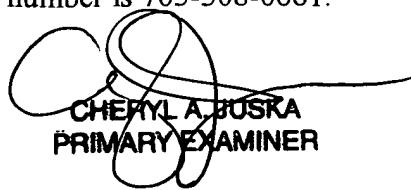
### *Conclusion*

10. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

cj  
July 28, 2003



CHERYL A. JUSKA  
PRIMARY EXAMINER